

Applicant: P. Bonutti
Application No.: 10/755,996
Examiner: D. Reip

Remarks

Claims 1-15 and 19-22 are pending in the application and are presented for the Examiner's review and consideration. Claims 1, 14, 15, and 19 have been amended. Claims 20-22 have been added. Claims 16-18 are canceled. Applicant believes the claim amendments and accompanying remarks herein serve to clarify the present invention and are independent of patentability. No new matter has been added.

35 U.S.C. §102 Rejection

Claims 1, 8, 9, and 13-19 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,609,635 to Michelson ("Michelson"). In response, Applicant respectfully submits that this rejection should be withdrawn.

Michelson discloses lordotic interbody spinal fusion implants for use in the disc space between two vertebrae. (col. 6, lns. 17-19). In an embodiment, the implant has movable projections, in the form of spikes, which are movable from a first position within the implant to a second position extending outside of the implant. (col. 12, lns. 38-41). The implant has opposing wedge shaped members having a central threaded opening for receiving a threaded screw having a head and a slot. The wedges are facing each other so that upon turning of the screw, the two wedges are drawn together to cause the spikes to pivot about their end and project to the exterior of the implant through the aligned slots. (col. 12, lns. 47-55).

As illustrated in Figure 9 of the present invention, Applicant discloses an implant that includes an upper bone-contacting surface, a lower bone-contacting surface, a side surface therebetween, and two channels: one extending through the side surface and upper surface and another extending through the side surface and lower surface. A screw is disposed in each channel to fasten the implant to the bones.

Claim 1 now recites an implantable device for changing the spatial relationship between first and second bones. The device comprises a body configured and dimensioned for insertion into a joint located between the first and second bones and coated with a bone growth promoting

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material. The bone growth promoting material includes a bone morphogenic protein and the body includes bone-contacting first and second major surfaces, a side surface therebetween, and a first channel extending through the first major surface and side surface. As the cited reference fails to teach or suggest all of these claim elements, Applicant respectfully submits that claim 1 is patentable over Michelson. Furthermore, based on at least their dependencies, Applicant submits that claims 8, 9, and 13-19 are patentable as well.

35 U.S.C. §103 Rejections

Claims 4-7 were rejected under 35 U.S.C. §103(a) as being unpatentable over Michelson in view of U.S. Patent No. 4,394,370 to Jefferies ("Jefferies"). Claim 10 was rejected under 35 U.S.C. §103(a) as being unpatentable over Michelson in view of U.S. Patent No. 5,669,909 to Zdeblick *et al* ("Zdeblick"). If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Applicant submits that claims 4-7 and 10 depend from amended independent claim 1. As previously explained, Applicant contends that claim 1 is patentable over the Michelson. Therefore, based on at least their dependencies, Applicant submits that claims 4-7 and 10 are patentable as well. Furthermore, Applicant submits that neither Jefferies nor Zdeblick, alone or in combination, remedies the deficiencies of Michelson with respect to independent claim 1.

Reinstatement of Withdrawn Claims

Based on the aforementioned amendments and remarks, Applicant respectfully submits that claims 2, 3, 11, and 12 should be reinstated since they depend from generic claim 1.

Conclusion

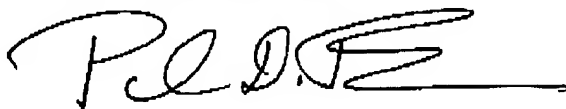
In light of the foregoing remarks, this application is now in condition for allowance and early passage of this case to issue is respectfully requested. If any questions remain regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

A fee of \$180 is believed to be due for an Information Disclosure Statement. A PTO-

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2038 Credit Card Payment Form is submitted herewith. Please charge any additional fees (or credit any overpayment of fees) to the Deposit Account of the undersigned, Account No. 503410 (Docket No. 780-A02-021-5).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P.D. Bianco', with a long horizontal flourish extending to the right.

Paul D. Bianco, Reg. # 43,500

Customer Number: 33771
Paul D. Bianco
FLEIT KAIN GIBBONS GUTMAN BONGINI & BIANCO
21355 East Dixie Highway, Suite 115
Miami, Florida 33120
Tel: 305-830-2600; Fax: 305-830-2605
e-mail: pbianco@focusonip.com